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10/041,833	10/19/2001	David Laverne Sprinkle	DEE6270P0160US	5412

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EXAMINER
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FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/041,833

Applicant(s)

SPRINKLE, DAVID LAVERNE

Examiner

Bryan Fischmann

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2,5-7 and 10-20 is/are allowed.
- 6) ☒ Claim(s) 8 is/are rejected.
- 7) ☒ Claim(s) 3,4 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 26 March 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Acknowledgments***

1. The Amendment (paper 10) filed 07-07-2003 has been entered per the RCE below. The Declaration (paper 12) filed 09-08-2003 has been entered.

***Request for Continued Examination***

2. The request filed on 9-08-2003 (paper 9) for a Request for Continuing Examination (RCE) under 37 CFR 1.114 based on parent Application No. 09/663,236 is acceptable and an RCE has been established. An action on the RCE follows.

***Specification***

3. The abstract of the disclosure is objected to because of the following:  
  - A) The abstract is too long. Per 37 CFR 1.72 and Section 608.01(b) of the MPEP, the abstract shall not exceed 150 words in length. The Instant Abstract is approximately 200 words long.

***Declaration under 37CFR 1.131***

4. The declaration under 37 CFR 1.131 (paper 12) to overcome the 35 USC 103 rejection of claims 8 and 9 as being unpatentable over Moe, in view of Fuzzen and Schupback has been reviewed.

The main inventive concept of independent claim 8 is the boom arms extending parallel then angling inward. Claim 9 is dependant upon claim 8. The prior art relied upon for a teaching of the main inventive concept of claim 8 is Schupback. Schupback was patented on 06-03-2003 and filed on 05-04-2001. The Instant Application was filed

Art Unit: 3618

on 10-19-2001. The section of 102 relied on for the 103 rejection would therefore be 102(e). The 37 CFR 1.131 declaration shows the invention of claim 8 was reduced to practice on 02-26-2000.

Due to the above, the rejection of claims 8 and 9 under 35 USC 103 as obvious over Moe, in view of Fuzzen and Schupback is withdrawn as a result of the showing under 37 CFR 1.131.

### ***Drawings***

5. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

### ***Claim Objections***

6. Claim 3 and 4 are objected to because of the following:

A) The last paragraph of claim 3 recites "...and a fuel tank, and a hood covering...".

To improve wording, the first occurrence of the word "and" in the above recitation should not be present.

Compare to claim 12 where the word "and" in an identical recitation was deleted.

Claim 4 is objected to, since it is dependant upon claim 3.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Lord, US Patent 2,468,602.

Lord teaches a utility vehicle comprising:

a chassis supported on wheels (Figure 1);

a loader bucket (48);

a pair of towers (24) supported on said chassis and extending substantially vertically (Figure 1);

a pair of boom arms (32) pivotally connected at base ends thereof to said loader bucket, said boom arms extending in parallel from said loader bucket rearward (Figure 2) and at a substantially midway position (see comments below) being angled inwardly toward each other (approximately 90 degree inward bends) to said base ends (boom arms then extend to base ends).

Regarding the recitation of a "substantially midway position", note that the "substantially midway position" may be selected to be a "substantially midway position" between the bucket and front tire, for example. Also note that the use of the word "substantially" before the word "midway", may broadly be interpreted to be from the ¼

Art Unit: 3618

length position to the  $\frac{3}{4}$  length position. Note that the "inward bends" occur at approximately the  $\frac{1}{4}$  length position.

***Allowable Subject Matter***

9. Claims 1, 2, 5-7 and 10-20 are allowed.
10. Claims 3 and 4 would be allowable if the claim objection to claim 3 were overcome.
11. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Applicant's Remarks (paper 10) and Examiner's Comments***

12. The amendment (paper 10) resolved the specification objection made on the last Office Action (paper 8).
13. As noted, the declaration under 37 CFR 1.131 has overcome the 103 rejection of claims 8 and 9 made on the last Office Action. However, as noted, new grounds of rejection of claim 8 are set forth in this Office Action.
14. The amendment to the claims has overcome the 102 rejections set forth in the last Office Action.

Art Unit: 3618

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- A) Simmonds – teaches boom arms that are closer together toward the rear
- B) Rogers – teaches non-parallel boom arms.
- C) Bass – teaches boom arms that decrease in thickness toward the ends
- D) Plourde – teaches a work vehicle with towers and boom arms
- E) Zimmerman, et al – teaches arms that taper in thickness toward the rear

16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 7:30 to 4:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

 12-1-3  
BRYAN FISCHMANN  
PATENT EXAMINER